

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FRANCISCO CANA FERNANDEZ,

Petitioner,

vs.

JACKIE CRAWFORD, et al.,

Respondents.

Case No. 2:04-CV-00997-RLH-(PAL)

ORDER

Petitioner has submitted an Application for Certificate of Appealability (#46). To appeal the denial of a petition for a writ of habeas corpus, Petitioner must obtain a certificate of appealability, after making a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c).


Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th Cir. 2000). Petitioner presents three issues on appeal, and the Court finds that all three meet this standard.

1 IT IS THEREFORE ORDERED that the Application for Certificate of Appealability
2 (#46) is **GRANTED** on the following issues:

- 3 1. Whether the Petition (#1) states valid claims of the denial of a constitutional
4 right;
5 2. Whether the Court was correct in its procedural ruling;
6 3. Whether Petitioner provided sufficient cause to equitably toll the time he
7 spent on his untimely state petition.

8 DATED: March 7, 2008.

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10 ROGER L. HUNT
11 Chief United States District Judge
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